

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

HARRY and CHERYL PELTIER.

CASE NO. C14-583 MJP

Plaintiffs,

**ORDER ON MOTION TO DISMISS**

V.

SUNTRUST BANK, INC. and Doe  
Defendants 1 through 20.

## Defendants.

THIS MATTER comes before the Court on Defendant's Motion to Dismiss. (Dkt. No. 9.)

Plaintiffs failed to oppose the Motion and Defendant represents that Plaintiffs have not been actively prosecuting the case. (Dkt. No. 10.) Having reviewed the Motion and Defendant's Reply, the Court hereby GRANTS the motion to dismiss without prejudice.

Pursuant to Local Rule 7(b)(2), failure to oppose a motion (other than a motion for summary judgment) may be deemed as an admission that the motion has merit.

Defendant SunTrust Bank, Inc., first argues Plaintiffs have sued the wrong entity—according to Defendant, Defendant’s subsidiary, SunTrust Mortgage, is responsible for the

1 actions Plaintiffs allege Defendant has taken. Because this argument would ordinarily result in  
 2 permission for Plaintiffs to amend their complaint rather than dismissal, the Court does not rest  
 3 its dismissal on this argument.

4 Defendant also argues Plaintiff's Washington Consumer Protection Act and claim for  
 5 violations of the Code of Federal Regulations fail to state a claim for relief. The CPA claim relies  
 6 on an alleged violation of RCW 61.24.135(2) to establish the "unfair or deceptive act in trade or  
 7 commerce" element of the Hangman Ridge test for CPA claims. See 105 Wn.2d 778, 784  
 8 (1986). (Am. Compl., Dkt. No. 4-1 at 5 (quoting RCW 61.24.135(2)(c).) Specifically, Plaintiffs  
 9 argue Defendant "fail[ed] to initiate contact with a borrower and exercise due diligence as  
 10 required under RCW 61.24.031" by "refus[ing] to work with Plaintiffs in any meaningful way to  
 11 modify their mortgage payments, a clear violation of the due diligence requirement. (Dkt. No. 4-  
 12 1 at 5.) However, as Defendant points out, the requirements under RCW 61.24.031 concern  
 13 specific steps that must be taken prior to issuing a notice of default. Plaintiffs' Amended  
 14 Complaint does not allege a lack of diligence on the part of SunTrust as to the specific subjects  
 15 or the time period regulated by RCW 61.24.031, but claims that Plaintiffs submitted multiple  
 16 applications for loan modifications during a much longer period, from 2011 to 2014. As  
 17 Defendant notes, there is no legal requirement that Plaintiffs receive a specific loan modification  
 18 as a result of their request. Because Plaintiff's Amended Complaint does not allege sufficient  
 19 facts to state a CPA claim that is plausible on its face, the CPA claim is dismissed without  
 20 prejudice.

21 The claim for violations of 12 CFR § 1024.41 presents a closer question. Plaintiffs allege  
 22 Defendant failed to respond to a complete loss mitigation application in any way. (Dkt. No. 4,  
 23 Ex. 1 at 6.) Defendant argues that because SunTrust Mortgage admittedly made requests for  
 24

1 documents after this point, the application could not have been complete. (See *id.*) But this  
2 argument asks the Court to trust SunTrust's evaluation of the application without so much as  
3 attaching the loss mitigation application or SunTrust's later request for documents (both the  
4 application and the requests are referred to in the Amended Complaint). The Court will not do  
5 so.

6 However, in light of the fact that Plaintiffs have not responded to Defendant's dispositive  
7 motion, the Court dismisses the remainder of the action for failure to prosecute. The dismissal is  
8 without prejudice.

The clerk is ordered to provide copies of this order to all counsel.

Dated this 16th day of December, 2014.

Marsha J. Pechman  
Marsha J. Pechman  
Chief United States District Judge